

Sunset Public Hearing Questions for
Board of Podiatric Medical Examiners
Created by Section 63-3-103, *Tennessee Code Annotated*
(Sunset Termination June 2021)

Enabling Statute, Purpose, and Rules and Regulations

1. Please provide a brief introduction to the board including information about its purpose, statutory duties, staff, and administrative attachment.

The Board of Podiatric Medical Examiners was created in 1931 by an act of the State Legislature. Its mission is to safeguard the health, safety, and welfare of Tennesseans by requiring those who practice the profession of podiatry within this state be qualified. The Board interprets the laws, rules, and regulations to determine the appropriate standards of practice to ensure the highest degree of professional conduct. The Board is authorized to issue a license to qualified applicants who have completed appropriate education and successfully completed required examinations. The Board is responsible for the investigation of alleged violations of the Practice Act and rules and is responsible for the discipline of licensees who are found guilty of such violations.

Podiatrists, Prosthetists, Orthotists, and Pedorthists may be licensed by either examination or endorsement from other states.

The administrative staff of the Division of Health Related Boards supports the Board by issuing licenses to those who meet the requirements of the law and rules. Renewal notices are mailed from Board's administrative office approximately sixty (60) days prior to the expiration of the license to the current address on record. For those licensees who have opted in for electronic notification, an email will be sent to the email address on file approximately seventy (70) days prior to the expiration date of the license. Licenses can be renewed on-line seventy (70) days prior to expiration. Failure to renew by the expiration date may result in a fine.

As a response to the difficulties encountered by licensees as a result of COVID-19, the Governor issued an Executive Order in March 2020 extending license renewal dates. As a result of the Executive Order, the Board extended the renewal date from sixty (60) days to one hundred (100) days. Upon expiration of the Executive Order in August 2020, the renewal notices dates returned to sixty (60) days for regular mail and seventy (70) for email notification.

The Board meets four (4) times each year for purposes of conducting administrative business concerning ratifying licenses, promulgating rules, disciplinary matters, etc. The five (5) Board members are appointed by the Governor and serve four (4) year terms. A quorum of three (3) members is required to conduct business.

2. Have the board promulgated rules as authorized in Section 63-3-106, Tennessee Code Annotated? If yes, please cite the reference(s).

The Board promulgated Rule Chapters 1155-01, 1155-02, 1155-03 and 1155-04. Over the past two years, there have been amendments to Rules 1155-04-.04, 1155-04-.05, and 1155-04-.09 (effective October 2018), as well as to Rules 1155-02-.08, 1155-02-.18, and 1155-02-.24 (effective August 2019).

Board Organization

3. Provide a list of current board members and explain how membership complies with Section 63-3-103, Tennessee Code Annotated.

Name	Profession	Role	Appointed	Expires	Consecutive	Demographics
Sheila Schuler	Podiatrist	Member	06/14/2017	06/30/2022	Yes	Non-Minority, Female, Middle TN
David J. Sables	Podiatrist	Member	08/06/2018	06/30/2022	Yes	Non-Minority, Male, Middle TN
Ramesh Pavuluri	Podiatrist	Member	10/03/2017	06/30/2021	No	Minority, Male, Middle TN
Bhekumuzi Khumalo	Podiatrist	Member	10/01/2019	06/30/2021	No	Under 60 years, Minority, Male, West TN
Gerald E. Stark	Orthotist, Prosthetist	Member	12/06/2019	06/30/2023	No	Non-Minority, Male, East TN
Martha Kay Oglesby		Consumer Member	07/01/2017	06/30/2021	Yes	Over 60 years, Non-Minority, Female, East TN

4. Are there any vacancies on the board? If so, please indicate how long the position has been vacant and explain steps that have been taken to fill any vacancies.

There are no vacancies on the Board.

5. How many times did the board meet in each of the last two fiscal years?

The Board met four (4) times in Fiscal Year 2019. The Board met four (4) times in Fiscal Year 2020.

- 6. How many members were present at each meeting? Please note meetings where the board did not have a quorum.**

Fiscal Year 2019		
Meeting Date	# Board Members	Quorum
08/22/2018	6	Yes
09/27/2018	4	Yes
11/02/2018	6	Yes
02/07/2019	5	Yes
05/10/2019	6	Yes

Fiscal Year 2020		
Meeting Date	# Board Members	Quorum
08/09/2019	6	Yes
10/25/19	5	Yes
11/01/2019	6	Yes
02/07/2020	4	Yes
05/14/2020	4	Yes

Financial Information

- 7. What were the board's revenues and expenditures for the last two fiscal years? Does the board carry a reserve balance? If so, please provide additional relevant information regarding the reserve balance, including whether the board is self-sufficient.**

For fiscal year 2019, the Board had revenues of \$100,742.94 and total expenditures of \$96,435.54, with a reserve balance of \$327,740.30.

For fiscal year 2020, the Board had revenues of \$72,264.08 and total expenditures of \$121,324.07, with a reserve balance of \$270,601.24.

The Board is self-sufficient.

- 8. What per diem or travel reimbursements do board members receive? How much was paid to individual board members in the last two fiscal years?**

Members receive a per diem of \$100.00 per day and reimbursement of travel expenses for mileage, hotel and meals (airfare, if needed.) Members are reimbursed for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration.

The per diem and travel amounts for each board member listed below represents the amounts paid during July 1st – June 30th of each fiscal year.

Board Member Name	FY19- Per Diem Total	FY19-Travel Reimbursement Total	FY20-Per Diem Total	FY20-Travel Reimbursement Total
Sheila Schuler	\$ 800.00	\$ 142.88	\$ 300.00	\$ 53.58
Tyrone Davis	\$ 500.00	\$ 1,754.00	\$ 100.00	\$ 430.87
Martha Kay Oglesby	\$ 300.00	\$ 1,579.48	\$ 200.00	\$ 992.38
David Sables	\$ 500.00	\$ 103.14	\$ 200.00	\$ -
Ramesh B. Pavuluri	\$ 400.00	\$ 39.48	\$ 300.00	\$ -
Karl Fillauer	\$ 400.00	\$ 716.08	\$ 200.00	\$ -
Bhekumuzi Khumalo	\$ -	\$ -	\$ 100.00	\$ -
Gerald Stark	\$ -	\$ -	\$ -	\$ -

9. Does the board collect fees? If so, provide relevant information about fees collected. Indicate whether these fees were established through rule or through state law.

Podiatrist Fee Categories	Fee Amount	Rule or Statute
Academic License	\$440	Rule
Application	\$440	Rule
Renewal (biennial)	\$275	Rule
Late Renewal	\$150	Rule
Replacement License	\$25	Rule
State Regulatory Fee (initial and biennial)	\$10	Rule

Orthotists, Prosthetists, and Pedorthists Fee Categories	Fee Amount	Rule or Statute
Application	\$300	Rule
Renewal (biennial)	\$160	Rule
Late Renewal	\$100	Rule
Reinstatement	\$300	Rule
Duplicate or Replacement License	\$25	Rule
Continuing Education Course Accreditation	\$50	Rule
Orthotic/Prosthetic Residency Registration	\$10	Rule
State Regulatory Fee (initial and biennial)	\$10	Rule

Podiatric X-Ray Operatory Fee Category	Fee Amount	Rule or Statute
Application	\$50	Rule
Renewal (biennial)	\$30	Rule
Late Renewal	\$20	Rule
State Regulatory Fee (initial and biennial)	\$10	Rule

Sunshine Law, Public Meetings, and Conflict of Interest Policies

- 10. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of meetings and making minutes available to the public?**

The Board is subject to the sunshine law requirements of Tenn. Code Ann. 8-44-101. A public meeting notice is posted to the Board's web site by the 15th day of the month proceeding the month of the meeting date and is also posted on the Public Participation Calendar. The Board's administrative staff attends all meetings and takes minutes. Those minutes are then prepared for review and ratification by the Board at its next regularly scheduled meeting. After the minutes are ratified by the Board, they are placed on the Board's website.

- 11. Does the board allow public comment at meetings? Is prior notice required for public comments? If public comment is not allowed, how does the board obtain feedback from the public and those they regulate?**

Board meetings are conducted in full view of the public pursuant to a sunshine notice which provides information for the location of the meeting – whether the meeting is held in person or via remote/teleconference means - a link to remotely view live-streaming of the meeting, and notice of agenda items. The meeting is guided by this published agenda. The chair of the Board will recognize members of the public who request to be heard on a matter properly noticed before the Board.

Additionally, the Board has instituted a sign-in sheet procedure that permits members of the public to make comments on matters properly noticed and before the Board for consideration. The public may also make comments on matters not noticed before the Board however those comments will not result in action being taken by the Board until publicly noticed. Action taken on matters not receiving proper notice would violate the sunshine laws of Tennessee. Members of the public can review the published agenda to see what matters are before the Board. Members of the public may also request to have a topic or comment that requires discussion, submitted to the board administrator or director in advance of the meeting in order to have the matter placed on agenda for review by the Board.

An announcement is made at each meeting to provide instructions to members of the public wishing to be heard by the Board of the sign-in sheet and time is specifically allotted on the agenda for those individuals to make their comments. In the event a meeting is held via remote/teleconference methods, announcements are made providing instructions as to how a member of the public may request to comment via the virtual system and opportunities for comments are provided at various times throughout the meeting to ensure the member is addressed by the Board. A video recording of the meeting is placed on the Board's website within 24-48 hours of the meeting and is also available on the Department's web site for approximately one month following the meeting. An audio recording of the meeting is also available upon request.

12. Does the board have policies to address potential conflict of interest by board members, employees, or other state employees who work with the board?

Yes. All board members are educated on the Department of Health's Conflict of Interest Policy and reminded during each meeting of the obligation to strictly adhere to the policy. Board members are required to sign a conflict of interest statement upon appointment and annually thereafter. It is the responsibility of the Board Administrator to ensure that the conflict of interest statement is properly and timely signed. The Board's administrative office keeps signed copies of the conflict of interest statement on file in the Health Related Boards Office.

Licensure and Oversight Responsibilities

13. How many total licensees has the board had in each of the last two fiscal years?

Profession	FY 2019	FY 2020
Podiatrist	271	286
Podiatric X-Ray Operator	136	143
Orthotist	150	149
Prosthetist	141	143
Pedorthists	42	47

14. How many new applications for licenses has the board received in each of the last two fiscal years? If necessary, please differentiate by type or category.

Profession	FY 2019 Applications	FY 2020 Applications
Podiatrist	14	0
Podiatric X-Ray Operator	24	12
Orthotist	2	9
Prosthetist	4	3
Pedorthists	4	2

15. How many applications did the board deny during each of the last two fiscal years? What were the reasons for denial?

One (1) licensure application was denied in FY20. An out of state applicant sought dual licensure for a prosthetist and orthotist license. The applicant did not meet our educational requirements for orthotist licensure but did meet the requirements for a prosthetist and was granted a prosthetist license.

16. What were the total number of complaints received by the board in each of the last two fiscal years? If available, please differentiate between consumer complaints and administrative complaints.

In FY2019, 13 new complaints were opened. All were consumer complaints.

In FY 2020, 15 new complaints were opened. All were consumer complaints.

17. Describe the process by which the board receives, handles, and tracks complaints. For example, are complaints rated by level of seriousness or other priority-handling method? Is a complaint log kept? What benchmarks have been established for timely resolution of complaints?

The Board receives complaints through the Office of Investigations. The Office of Investigations maintains a website with instructions of how to file a complaint. This website allows the public to provide complaints electronically, by phone, mail or fax. All complaints are entered into a database system upon receipt and are assigned to the Board's complaint coordinator. Each complaint is reviewed by the board consultant and the board attorney to determine if the allegation constitutes a violation of the Board's Practice Act and rules.

If it is determined that the allegation would constitute a violation of the Practice Act or rules, the board consultant and board attorney will request that the allegation be investigated by a trained investigator with the Department of Health. Complaints that involve the potential for immediate jeopardy to the public are prioritized and assigned a 7 day benchmark for completion. Other cases are assigned 30, 60, 90 or 120 day benchmarks based on the severity of the allegations and potential risk of harm to the public. Complaints are completed within the assigned benchmark when possible however 30 day extensions are granted in instances when additional time is needed to complete a thorough investigation due to issues such as witness availability and receipt of medical records from a third party.

Once investigated, the investigative report and all evidence obtained are provided to the board consultant and board attorney where they review it together to determine if there is evidence to support the violation alleged by the complainant. If so, the board consultant and board attorney discuss the appropriate level of discipline that is proportionate to the violation and the licensee is provided with an opportunity to agree to that discipline. The licensee also has the right to reject the Board's proposed discipline and request a formal contested case hearing before the Board.

Not all complaints are assigned for investigation. In instances where the board consultant and board attorney find that the complaint does not violate the Practice Act and investigation is not necessary, the file is closed, and the complainant is notified in writing. Complaints that fall outside the jurisdiction of the Office of Investigations are forwarded as appropriate.

18. Please describe how the board takes disciplinary action against practitioners who are found to have violated statutes and/or the board's rules and regulations.

If the board consultant and board attorney determine that the investigative report and evidence substantiate that a licensee has committed a violation of the Practice Act and/or rules that rises to the level of public discipline, the case will be transferred to the Office of General Counsel for prosecution.

Formal discipline of a licensee can consist of a reprimand, probation, suspension, voluntary surrender, revocation and summary suspension. The licensee can also be assessed civil penalties that range from \$50.00 - \$1,000.00 per violation; required to complete continuing education hours in addition to those required to maintain licensure and assessed the costs for the investigation and presentation of the matter.

There are several procedural avenues by which disciplinary matters may come before the Board:

Consent Orders - Presents the licensee an opportunity to resolve the matter by agreement, making formal proceedings unnecessary. By signing the Consent Order, the licensee waives the right to a contested case hearing and all rights to judicial review in the matter and agrees to the presentation and consideration of the Consent Order by the Board for ratification at the scheduled public meeting. After the Board approves the public disciplinary action, the Office of General Counsel sends a copy of the order to the Disciplinary Coordinator. The Disciplinary Coordinator changes the licensure status in the LARS database as appropriate, posts the disciplinary action on the public website for the Health Related Boards, and reports the disciplinary action to the National Practitioner Databank. The Disciplinary Coordinator also monitors the case as appropriate to assure that the Respondent complies with the terms of the order and reports the action on the monthly disciplinary action report. Should the Board fail to ratify the Consent Order, formal disciplinary proceedings will be initiated, and the licensee is notified of such.

Agreed Orders- When a licensee has requested a formal disciplinary hearing in lieu of settling the matter by Consent Order and then requests to settle the matter prior to the formal proceeding taking place, an Agreed Order allows the licensee to waive the right to a contested case hearing and any and all rights to judicial review in the matter. The Agreed Order is presented to the Board for ratification at the scheduled public meeting. After the Board approves public disciplinary action, the Office of General Counsel sends a copy of the order to the Disciplinary Coordinator. The Disciplinary Coordinator changes the licensure status in the LARS database as appropriate, posts the disciplinary action on the public website for the Health Related Boards, and reports the disciplinary

action to the National Practitioner Databank. The Disciplinary Coordinator also monitors the case as appropriate to assure that the Respondent complies with the terms of the order and reports the action on the monthly disciplinary action report. Should the Board fail to ratify the Agreed Order, formal disciplinary proceedings will be initiated, and the licensee is notified of such.

Contested Cases – Formal disciplinary hearings in which Board sits as jury. An Administrative Law Judge presides and makes evidentiary rulings and instructs the Board as to procedure. Board members may question witnesses. The licensee, known as the “Respondent,” is prosecuted by a litigating attorney from the Office of General Counsel who represents the State, just as a prosecutor in a criminal court represents the State. A licensee always has the right to legal counsel.

19. How many licenses did the board revoke or suspend during each of the last two fiscal years? What were the reasons for the revocations or suspensions?

The Board revoked one (1) podiatry license in FY19 for a criminal conviction that was the result of Medicare fraud. The Board revoked one (1) podiatry license in FY20 for a criminal conviction that was the result of overprescribing.

The Board suspended one (1) podiatry license in FY19 for opioid dependence that affected the licensee’s ability to practice podiatry. The Board summarily suspended one (1) podiatry license in FY20 due to inappropriate prescribing practices and opioid abuse.

20. Does the board maintain reciprocal agreements with other states to recognize podiatrists who are licensed under the laws of other states such that these individuals may practice in Tennessee?

The Board of Podiatric Medical Examiners has no reciprocal agreements with other states.

21. What are the continuing professional education requirements for podiatrists? How does the board oversee continuing professional educational requirements of podiatrists?

Podiatry

The Board requires podiatrists to complete fifteen (15) clock hours of continuing education each calendar year (January 1- December 31).

- Twelve (12) hours of the fifteen (15) clock hour requirement shall be clinical, scientific, or related to patient care. If the licensee is performing ankle surgery pursuant to T.C.A. § 63-3-101 (b) (1), ten (10) of these twelve (12) hours shall pertain to ankle surgery.

- Beginning January 1, 2008, at least one (1) hour of the annual fifteen (15) hour requirement shall, every other calendar year, be a course designed specifically to address prescribing practices.
- Ten (10) of the fifteen (15) clock hour requirement must be completed in the traditional “lecture/classroom” format.
- Five (5) hours of the fifteen (15) clock hour requirement may be completed in any of the following multi-media formats: The Internet, Closed circuit television, Satellite broadcast, Correspondence courses, Videotapes, CD-ROM, DVD, Teleconferencing, Videoconferencing or Distance learning.

X-ray Operators

The Board requires x-ray operators to complete four (4) hours of radiological related continuing education biennially. The courses must be provided or sponsored by the APMA, a state regional affiliate of the APMA, an affiliated specialty group, the United States government, or other courses approved by the Board.

Orthotist, Prosthetist, Pedorthists

The Board requires orthotists, prosthetists and pedorthists to complete fifteen (15) hours of continuing education annually.

- At least six (6) hours of the continuing education each year must be obtained from providers in the State of Tennessee. No more than five (5) hours of the annual requirement shall be completed by any of the means listed in Rule 1155-02-.12 (1) (d) The Internet, Closed circuit television, Satellite broadcast, correspondence courses, Videotapes, CD-ROM, DVD, Teleconferencing, Videoconferencing or Distance Learning.
- A person who is licensed in more than one (1) profession under these rules shall annually complete a total of twenty (20) hours of continuing education. Any of these hours shall be subjects pertaining to each profession in which he/she is licensed.
- Acceptable continuing education shall consist of courses provided, approved, or sponsored by: The American Board for Certification in Orthotics and Prosthetics, Inc.; The Board for Orthotist/Prosthetist Certification; The Board for Certification in Pedorthics; The Pedorthic Footwear Association; Tennessee Orthotic and Prosthetic Facilities, Inc.; The Tennessee Podiatric Medical Association; and any other entity whose education programs have been approved by the Board.

To provide oversight, licensees are audited to determine if they have completed the continuing education hours required for licensure. The audit process is conducted one (1) month after the licensee renews their license. The licensure computer system generates a random selection of 5-10% of each profession. Each licensee randomly selected is sent a certified letter to address of record on file with the Board, requesting the licensee submit proof of completion of the continuing education hours specified by their profession’s rules.

If a response is not received, a second certified letter is sent to the licensee. If there is still no response, an Agreed Citation is sent to the licensee. An Agreed Citation is an administrative fine in the amount of one hundred dollars (\$100.00). It is not formal discipline that is reported to the National Practitioner's Data Bank. In addition to the fine, the licensee must also make up the number of hours they were deficient. The hours completed to fulfill the deficiency are in addition to the hours required for the current year's requirement.

Reports, Major Accomplishments, and Proposed Legislative Changes

22. What were the board's major accomplishments during the last two fiscal years?

The recent rule amendments allowed applicants who has practiced in another state during the three year period immediately before application in TN to be waived from taking Part III of the NBPME exam, making the licensure process for reciprocity more efficient for the applicant. They promulgated a rule on record-keeping for podiatrists as there had been no guidance to the profession on record-retention and destruction in the past. The rule gives guidance on what should happen to a record when a podiatrist leaves a practice, retires, or dies.

23. What, if any, challenges have the board faced in the last two fiscal years?

- 1) Hesitancy and concern from board members over conducting board/committee meetings via an in-person format, due to their own personal high-risk status or travel/overnight stay concerns during the pandemic
 - a. Executive Order #16 and subsequent extensions, allowing for meetings to be held via remote teleconference means, has provided the resolution required for this challenge, thus far
- 2) Obtaining in-person continuing education hours as required for the maintenance of a license, due to live events being cancelled or converted to an online format
 - b. Executive Order #50 and the subsequent Commissioner's Policy regarding the audit of in-person continuing education for calendar year 2020 has provided the resolution required for this challenge, thus far

24. Please describe any items related to the board that require legislative attention and your proposed legislative changes.

There are no items that require legislative attention.

25. Should the board be continued? To what extent and in what ways would the absence of the board affect the public health, safety, and welfare of the citizens of the state of Tennessee?

Yes, the Board should be continued. Without the Board of Podiatric Medical Examiners, members of the public whose health care is provided by podiatrists, orthotists, prosthetists, and pedorthists would be uncertain that their healthcare provider is fully qualified to practice his/her profession and does so in a safe, competent, and ethical manner.

26. Please identify the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.

Brent Culberson, Assistant Commissioner, Health Licensure and Regulation
Jennifer Putnam, Deputy Director, Health Licensure and Regulation
Alicia Grice, Fiscal Director, Health Licensure and Regulation
David Silvus, Deputy, Office of General Counsel
Teddy Wilkins, Board Director

27. Please identify the appropriate agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

Alexa Witcher, Assistant Commissioner of Legislative Affairs
Brent Culberson, Assistant Commissioner, Health Licensure and Regulation
Jennifer Putnam, Deputy Director, Health Licensure and Regulation
Alicia Grice, Fiscal Director, Health Licensure and Regulation
David Silvus, Deputy, Office of General Counsel
Sheila Schuler, Board Chair

28. Please provide the office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

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